

**LODI CITY COUNCIL  
SPECIAL CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, JULY 30, 2003**

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of July 30, 2003, was called to order by Mayor Hitchcock at 7:00 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. REGULAR CALENDAR

B-1 “Discussion and possible action regarding residency requirement for City board and commission members”

City Manager Flynn noted that this matter appears before Council at the request of Mayor Hitchcock. He reviewed the following survey results tabulated by the City Clerk's Office and distributed to Council on a blue sheet (filed):

- Of 73 California cities that responded, 61 had a residency requirement for their boards and commissions, and of these, 18 also required that members be registered voters;
- 6 cities did not have a residency requirement;
- 6 cities were categorized as “other” due to various responses.

Mayor Hitchcock explained that the issue of residency recently arose and she felt it was an appropriate policy topic for Council to consider. She noted that there are quite a number of individuals that apply to serve on City of Lodi boards and commissions, who live outside the city limits.

In answer to Mayor Hitchcock, City Clerk Blackston reported that the East Side Improvement Committee bylaws describe the boundaries of Lodi's east side; however, the bylaws state that, “general membership shall be open to all persons.” The Parks and Recreation Commission bylaws state that the Commission is made up of members from the Lodi service area. The Lodi service area is not defined in the bylaws, though it is generally considered by the Parks and Recreation Department to be areas encompassing the Lodi Unified School District. The Greater Lodi Area Youth Commission was formed by adoption of a resolution and has no formal bylaws; however, within a document describing its mission and makeup it stipulates that the Commission is to be comprised of youths and adult advisors from the greater Lodi area community and lists the specific high schools served by the Youth Commission. It is generally assumed that members will live within the Lodi Unified School District.

PUBLIC COMMENTS:

- Eileen St. Yves was opposed to instituting a residency requirement for Lodi boards and commissions, as she believed there had been no problems that would warrant such restrictions. She recalled that at one time the East Side Improvement Committee required its members to either live on the east side or own or manage property within its boundaries. Subsequently the requirement was removed from its bylaws.
- Bob Johnson recalled that he was appointed to the Parks and Recreation Commission in 1988. Currently two members on the Commission live outside the city limits. According to the Parks and Recreation Master Plan, 30% to 35% of the youth participants live outside the city limits. He noted that two new subdivisions are being built in Lockeford, which will likely increase this percentage. If the Commission were represented similarly to Lodi Unified School District, 40% would be from outside the City. This would qualify the Commission to have two of its five members as non-residents.

Mayor Hitchcock reported that she received an e-mail communication from an individual who felt strongly that there should be a residency requirement to serve on a City board or commission. Reasons cited were that Lodi residents pay taxes that support the City, pay for staff, etc. In addition there could be conflicts of interest in voting if, as an example, a non-resident member was considering a fee increase for recreation program participants who live outside the City, or might encourage a bond because only City residents would be paying the taxes.

Mr. Johnson replied that, in his experience, the question of "inside" versus "outside" commissioners has never been raised. He commented that a \$5 non-residency fee is charged, which he believed to be woefully inadequate. Mr. Johnson had encouraged a higher fee for non-residents over the years; however, he had been voted down unanimously by commissioners regardless of their residency.

- Ann Cerney asked Council to consider the policies of other cities and, in addition to residency, that owning or leasing a business within the City also be factored into the decision.

Council Member Beckman voiced support for changing the City's policy to include a statement that the Mayor give preference to candidates that live within the City, and that a requirement be added that all boards and commissions members must be registered voters of San Joaquin County.

Mr. Flynn pointed out that there would need to be an exception for student members of the Youth Commission, to which Mr. Beckman agreed.

Council Member Hansen concurred that boards and commissions members should be registered voters and suggested that a residency requirement be instituted for members of the Planning Commission.

Mayor Hitchcock agreed that Planning Commissioners should be residents of the City.

Mayor Pro Tempore Howard believed that the only board or commission for which a residency requirement would be appropriate is the Planning Commission, due to its unique role. She voiced support for the concept of the Mayor giving preference to a City resident when two candidates are equally capable. In addition, she was in favor of requiring boards and commissions members to be registered voters of San Joaquin County. She noted, however, that anyone currently serving on a board or commission who is not a registered voter should be allowed to finish their term.

Council Member Land concurred with the suggestion to require all members of boards and commissions to be registered voters. He also agreed with requiring Planning Commissioners to be residents of the City, and in addition, suggested that the Site Plan and Architectural Review Committee also have a residency requirement.

MOTION:

Council Member Beckman made a motion, Land second, to direct staff to prepare a policy to be brought to Council for adoption with the following elements to be enacted for all future appointments to City of Lodi boards and commissions: 1) institute a requirement that, in order to qualify for appointment, applicants to City of Lodi boards and commissions must be registered voters in San Joaquin County; 2) require all Planning Commissioners to be residents of the City of Lodi; and 3) that the Mayor give preference to residents of the City of Lodi when considering recommendations for appointments to all other boards and commissions.

#### DISCUSSION

Mayor Pro Tempore Howard preferred that the issue of preference not be in the policy, as it would be at the discretion of the Mayor of whether or not to exercise that suggestion when making a recommendation for appointment. She also pointed out that the motion should include a statement that current members would be allowed to finish out their terms.

Council Member Beckman clarified that his intent regarding the residency preference issue was that it would be at the discretion of the Mayor. In addition, the proposed policy was intended for future appointments.

City Attorney Hays further clarified that he understood the motion regarding preference as not being mandatory, but rather an expression of the Council's wishes that the Mayor in his/her judgment consider residents ahead of non-residents, all things being equal. Staff will prepare a resolution incorporating the elements of the motion for Council's adoption at a future regularly scheduled meeting.

#### VOTE:

The above motion carried by a unanimous vote.

#### B-2 "Roles and responsibilities of Council Members"

City Manager Flynn stated that this topic appears on the agenda at the request of Council Member Beckman. He introduced attorney Tony Manzanetti who was referred by the League of California Cities.

Mr. Manzanetti reviewed his background and experience, noting that he now serves as the City Attorney for Elk Grove. He began by stating that as public officials, "how we do what we do, is just as important as *what* we do." The Council-Manager form of government is analogous to the system of checks and balances, and separation of powers. The International City Managers Association estimates that 70% of cities in the United States are operated under the Council-Manager form of government. The people of Lodi have chosen this form of government. The city council is responsible for policy making, while the operation and management of the organization is under the direction of the city manager. All five council members have equal powers. The mayor runs the meetings and may work with the city manager on organizing agendas, but is not given any greater policy function than the rest of the council and has no veto power. The council members act as a unit and, once a decision is made, no member has the right to veto the council's decision. It is management's job to administer policy decisions of the council and make day-to-day operational judgments. Mr. Manzanetti noted that if council does not like the way management is handling this, it has a solemn obligation to change it through the evaluation, correction, dismissal, and appointment processes. The City of Lodi has embodied these principles in its ordinances. He read the following excerpts from the Lodi Municipal Code:

2.12.060 – The city manager shall be the administrative head of the city government. He or she has the power and duty... to employ, discipline, or remove all heads of departments and all subordinate officers and employees of the city... to exercise control over all departments and divisions of the city government...; and  
2.12.070 – Except for the purpose of inquiry, the city council and its members shall deal with the administrative services solely through the city manager, and neither the city council nor any member thereof shall give orders to any of the subordinates of the city manager.

Mr. Manzanetti stated that the sole power of being able to make policy rests with the legislative body of the city, while the city manager is expressly confined to administrative services.

At the request of Council Member Beckman, Mr. Manzanetti explained that the communication between council members during meetings should be unrestricted with full First Amendment rights. Community standards, decorum, and courtesy are informal restraints. The Brown Act governs communication between council members once the meeting is adjourned. A majority of council members may not discuss or hear information about matters that fall within the jurisdiction of the city unless it is at a formal meeting. If three council members are together they cannot talk about city business. Two council members can discuss city business; however, one of them cannot then discuss the matter with a third member in an attempt to develop concurrence on a position, as this would be a serial meeting. The city manager cannot act as a device to get three council members to come to a collective concurrence on a particular item. The city manager, or other staff member doing so, would then be acting as the "hub in the spoke of a wheel" that may create a serial meeting. Communication between a city manager and council member should be free and unfettered. The city manager is the council's primary policy advisor. One on one communication between a council member and the city manager is absolutely allowed, as is such communication between a member of the public and a city council member. He warned, however, that a member of the public could also be used as a conduit to create a serial meeting. Communications between council members and the city attorney should also be unrestricted, as he is the legal advisor as to what the implications and ramifications are of any policy that council might be contemplating. With regard to council member communication with subordinate employees of the city, Mr. Manzanetti stated that it is a matter of management preference. He emphasized that it is not appropriate, however, for council members to give direction to or discipline subordinate employees. To do so creates "ripples" throughout the organization because there would be uncertainty about who to take direction from and what the proper course of action is.

In reply to specific questions posed by Council Member Beckman regarding communication with staff, Mr. Manzanetti advised that Council speak with the City Manager and decide on the ground rules so that every Member has the same understanding. The policy of how the city administers itself is within the Council's domain. With regard to follow up on direction given to staff, Mr. Manzanetti stated that in most cities it is handled by the city manager.

Council Member Beckman asked what the proper course of communication would be if a subordinate staff member became aware of potential litigation, i.e. when should they communicate this to the city attorney, and at what point should the city attorney inform the council.

Mr. Manzanetti indicated that there should be an internal understanding about such communications; generally, it is handled through the chain of command within staff. The process is within the management function.

Mr. Flynn commented that Council has been given a copy of the League of California Cities booklet entitled, "Mayors and Council Members Resource Guide," which describes role and responsibility issues.

In response to Council Member Beckman, Mr. Manzanetti characterized a city council as more like a board of directors for a corporation, than state legislators. He explained that the Council-Manager form of government was formed upon the corporate model and the idea that directors are the policy making body of the corporation.

Council Member Beckman asked whose responsibility it is to point out during a meeting that a member appeared to be in violation of the law.

Mr. Manzanetti explained that in closed session it is a violation of the Brown Act to discuss something that is not noticed on the agenda. He stated that as a city attorney in these situations he typically advises the council that it is an inappropriate discussion. He reiterated that no individual council member has veto power over council's decisions. It does dishonor to the process, and what public servants do, to disregard or fail to follow council's decision.

In reply to Council Member Hansen, Mr. Manzanetti stated that it has been his experience that citizens differentiate between council members, but when a negative situation occurs, it reflects on the council as a whole. He added that though a council member may individually disagree with a policy, as it moves forward, the member needs to honor the policy by "sticking with your team."

Mayor Hitchcock asked where a minority report comes in on an issue that is of great concern to the community and council does not agree on it.

Mr. Manzanetti replied that courtesy is tremendously important and extends to a minority viewpoint. "The people" ask that other council members keep an open mind to the minority view. It is incumbent upon the majority view to listen to the minority, and it is incumbent upon the minority to vote their conscience. He stated that it does disservice to the process to do otherwise. Once the council has acted, even if on a 3-2 vote, it is incumbent upon the minority to "step in line" with the majority. Council members who still feel committed to a minority position have the absolute obligation to advocate for that minority position. He reiterated that the council acts as a whole and to act contrary to a decision does disservice to the council's action. The minority can, however, continue to advocate for the position they feel is important.

Mayor Hitchcock inquired whether Mr. Manzanetti has ever seen a council make a decision that was illegal, to which he replied in the affirmative and stated that they have that right, just as the community has the right to have the judicial system decide whether the council is right or wrong.

Public Works Director Prima interjected that he serves as an alternate member on many of the same water boards as does Council Member Beckman and they frequently have extensive dialog on those issues, which he felt was completely appropriate. He stated that there is an internal understanding that he is to keep the City Manager informed of requests from Council.

Mr. Flynn stated that he encourages communication between people. He instructs staff not to take action based upon the direction of any single council member. If a situation appears that it is getting into the policy arena, he sees that it is brought back to Council for direction. He does expect Council to keep him informed on issues of interest to them so that he can ensure it is followed up on. He often refers Council inquiries directly to the appropriate department head for response. Mr. Flynn stated that whenever information is given to one Council Member, he does his best to ensure that all Council Members receive a copy, so that no one Member has more information than another.

Mayor Hitchcock asked Mr. Manzanetti if it is general practice that city managers who are communicating or providing information to one council member, see that all council members receive the same information.

Mr. Manzanetti replied that it is nearly a universal rule. He added that city managers generally do not survive in an environment where they are giving preferential information to one council member. The equal sharing of information is absolutely the rule throughout good government.

Council Member Hansen asked Mr. Manzanetti if he believed that 99% of the time council members should not be giving direction to subordinate staff, to which Mr. Manzanetti agreed and added that the percentage might be low.

In answer to additional questions posed by Council Member Hansen, Mr. Manzanetti recalled that he experienced a situation, when involved in litigation, where the judge asked to see his client in court. He explained to the judge that his client was the city council and

for them all to appear in court would be a violation of the Brown Act. Ultimately, Mr. Manzanetti received direction from council on which members would appear in court; however, he noted that it would never be more than two members. Mr. Manzanetti clarified his earlier statement that once the council makes a decision all members should “step in line” with the majority, i.e. he meant their *conduct*, not in terms of advocacy. If a council member still firmly believes that it is important, they should continue to advocate the minority position.

Mr. Manzanetti read the following 1830 quote from Alexis de Tocqueville:

*Local institutions are to liberty what primary schools are to science. Local institutions put liberty within the peoples reach. They teach people to appreciate liberty's peaceful enjoyment and accustom them to make use of liberty. Without local institutions a nation may give itself a free government, but it has not got the spirit of liberty.*

Council Member Beckman asked, in light of what he had heard this evening, that a reevaluation of the City Manager be scheduled for a closed session meeting.

Mayor Pro Tempore Howard believed that it would be a beneficial approach for Mr. Beckman to share concerns directly with the City Manager in an effort to work through issues and allow the opportunity for dialog prior to bringing the matter to Council. She asked whether Mr. Beckman intended the City Manager to be present at the closed session meeting.

Council Member Beckman replied that the closed session meeting should be scheduled as was the previous evaluation, where the City Manager was present only during part of the meeting.

MOTION / VOTE:

No Council action was taken or required—information only.

RECESS

At 8:47 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 8:58 p.m.

B. REGULAR CALENDAR (Continued)

- B-3 “Discussion and possible action regarding Council Members serving on City boards and commissions”

City Manager Flynn noted that this matter appears on the agenda at the request of Council Member Hansen.

Mayor Hitchcock announced that Council received communication from former Mayor Pennino regarding this topic. He had given a historical perspective on the Youth Commission and explained that the reason for a Council Member to serve on the Commission was to give it some credibility. When the Commission was initially formed it was thought that the adult community might not take it seriously, but would be more apt to do so if a Council Member served as a representative.

Council Member Hansen stated that he was very impressed with the Youth Commission and believed it to be an outstanding organization. He stated that the Commission has a lot of credibility and is well respected. He pointed out that of all the City of Lodi boards and commissions, the Greater Lodi Area Youth Commission is the only one with a Council representative. He felt that this policy should be changed because of potential bias and unfair influence that could result. The boards and commissions are formed to make recommendations and suggestions to Council who then make decisions about policy. Having a Council Member serve as a representative would tend to lend more weight to these recommendations.

Mayor Pro Tempore Howard explained that the seven adult advisors on the Youth Commission, which includes the Council representative, are not voting members. The adults participate only as advisors. She noted that former Council Member Phil Pennino served on the Youth Commission for eight years and asked what had changed to bring up Mr. Hansen's recommendation to eliminate the Council representative. She believed that the Youth Commission was unique because it is funded jointly by the City and Lodi Unified School District (LUSD). She cited a situation where, in the absence of the Mayor, she was able to advise the Youth Commission on a time-sensitive matter, which they in turn voted on in time to be prepared for an upcoming event. Ms. Howard expressed hope that beyond her term, Council representation on the Youth Commission could continue.

Mayor Hitchcock acknowledged that if a Council Member serves on a board or commission they would have an emotional investment in it and increased advocacy for the group. She suggested that it may no longer be necessary for elected representatives (i.e. members of the City Council and LUSD) to serve on the Commission now that it is well established.

Council Member Hansen believed that the City liaison would be quite capable of handling the functions that Ms. Howard stated the Council representative accomplishes. He noted that the other five adult advisors on the Commission are not tied to the City, which he saw as a significant difference.

PUBLIC COMMENTS:

- Bob Johnson, speaking from his experience on the Parks and Recreation Commission, noted that on a number of occasions the annual Youth Commission event "Wet 'n' Wild" seemed to be given top priority, which affected the Parks and Recreation staff and may have been influenced by the Council representative. He believed that the possibility of a commission feeling unduly influenced by a Council representative should be taken into consideration.
- Richard Dean, President of LUSD School Board and adult advisor on the Youth Commission, reported that of all the meetings he has attended with Ms. Howard, he had not seen her attempt to assert influence on the Commission. He acknowledged that a lot had changed since the Youth Commission was created in 1993. LUSD has extensively cut back its financial contribution and the Commission is now recognized as a City-run program. LUSD participates only by having an advisor and on occasion providing in-kind matches in terms of transportation or use of facilities. He believed that LUSD and Council representatives on the Commission allowed for more efficiency in "getting things done" and noted that the Commission's primary goal is to put on events for the youth of the community.

In answer to Mayor Hitchcock, Mr. Dean believed that the City continues to call the Youth Commission a joint venture out of courtesy. The City has its staff running the program and it is housed in a City facility. The School District's financial support is minimal compared to the way it was originally designed. The City supports the vast majority of the Youth Commission financially and functionally.

Mayor Pro Tempore Howard believed that this discussion was centered directly at her in an effort to remove her from the Youth Commission. She expressed sadness that the action against her would impact the Commission. She indicated that in her opinion this matter was related to an incident that took place within the past couple of months.

Mayor Hitchcock did not believe it was a good idea for Council Members to serve on boards or commissions where there is an opportunity to have influence in affecting policies. She did not believe this was the case with the Youth Commission, however, because it merely plans activities and has a small budget.

MOTION #1:

Council Member Beckman made a motion that the Greater Lodi Area Youth Commission no longer have a City Council representative at the conclusion of Mayor Pro Tempore Howard's tenure on the Commission. The motion **died** for lack of a second.

Tea Silvestre, Arts Coordinator, stated that as a City liaison she would be pleased to have a Council Member attend and participate in commission meetings. She felt it would make a positive statement to the community and she welcomed such involvement.

In response to Ms. Howard's implication that a particular incident was the driving factor of this topic, Council Member Hansen acknowledged that it did cause him to rethink this matter. He reiterated that no other City boards or commissions have a Council representative serving on them and therefore they have no potential conflicts. All boards and commissions have a City liaison assigned to them, who Mr. Hansen believed were doing an excellent job.

MOTION #2:

Council Member Hansen made a motion, Beckman second, that effective immediately the Greater Lodi Area Youth Commission no longer have a City Council representative.

DISCUSSION:

Mayor Pro Tempore Howard again expressed sadness that this action would have impacts extending beyond her tenure on the City Council.

Mayor Hitchcock did not believe that the Commission would have the strength that it needed in the long run without having a Council representative. She stated that youth members do not have the kind of clout needed to sustain the Commission and the adult advisors come and go. She felt the makeup of the Commission with the Council Member representative was working well.

Council Member Hansen countered that the City liaison could quite capably be able to serve in the capacity that Ms. Hitchcock suggested the Council representative did; and as they do for all other City boards and commissions. He emphasized that it was not his intent to harm the Youth Commission in any way and believed that they were so well established that they had earned the credibility necessary to sustain them.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Beckman and Hansen

Noes: Council Members – Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

C. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

D. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 9:51 p.m.

ATTEST:

Susan J. Blackston  
City Clerk